

**1722-CC10838**

Electronically Filed - City of St. Louis - July 21, 2017 - 12:14 PM

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI**

THE IRREVOCABLE INSURANCE )  
TRUST OF JUNE ELLEN KILO DATED )  
JUNE 29, 1983, by and through its Trustee, )  
JOHN A. KILO, )  
                                       )  
Plaintiff, )  
                                       )  
vs. )  
                                       )  
THE LINCOLN NATIONAL LIFE )  
INSURANCE COMPANY, )  
                                       )  
                                       )  
SERVE: John F. Rehagen )  
Director of Insurance )  
Missouri Department of Insurance )  
301 W. High St., Room 530 )  
Jefferson City, MO 65101 )  
                                       )  
Defendant. )  
                                       )  
Cause No.  
Division No.  
  
**PLAINTIFF DEMANDS  
TRIAL BY JURY**

**PETITION**

**COUNT I  
BREACH OF CONTRACT**

COMES NOW the Irrevocable Insurance Trust of June Ellen Kilo dated June 29, 1983, by and through its Trustee, John A. Kilo, and the undersigned counsel, and for Count I of its cause of action against Defendant The Lincoln National Life Insurance Company, and states to this Court as follows:

1. At all times mentioned herein, Plaintiff the Irrevocable Insurance Trust of June Ellen Kilo dated June 29, 1983 (hereinafter referred to as "Plaintiff" or the "Trust") is, and was, an irrevocable insurance trust entered into and existing by virtue of the laws of the State of Missouri, and located in the City of St. Louis.

**EXHIBIT 1**

2. At all times mentioned herein, Defendant The Lincoln National Life Insurance Company (hereinafter referred to as "Defendant") is, and was, a corporation duly organized under and existing by virtue of the laws of the State of Indiana, duly authorized to conduct an insurance business in the State of Missouri, and which conducts such business in the City of St. Louis with offices for the transaction of its usual and customary business located in the City of St. Louis.

3. On June 29, 1983, June Ellen Kilo (hereinafter referred to as "Insured") executed the Trust in which she named John A. Kilo as Trustee (hereinafter referred to as "Trustee").

4. On November 6, 1983, Defendant issued a policy of life insurance to the Plaintiff as owner naming June Ellen Kilo as insured, said policy being identified as Policy No. 5006088 (hereinafter referred to as "Policy").

5. Plaintiff was duly named as the Beneficiary of the Policy.

6. On May 21, 2015, at a time when the Policy was in full force and effect, Insured died.

7. Plaintiff, as the Beneficiary under the Policy, by and through Trustee, made claim against Defendant, Claim No. 1044106, for payment of the death benefit proceeds under the terms and conditions of the Policy.

8. Due and timely notice of proof for the death of Insured was provided to Defendant.

9. Insured, during her lifetime, and Plaintiff, subsequent to the death of Insured and in connection with making claim to Defendant, complied in all respects with the terms and conditions of the Policy.

10. Despite the demand of Plaintiff for payment of the death benefit proceeds in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00), Defendant has failed and refused and continues to fail and refuse said death benefits proceeds to Plaintiff.

11. As a direct and proximate result of Defendant's failure to perform its contractual obligations under the Policy, Plaintiff has incurred damages in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00).

WHEREFORE, Plaintiff the Irrevocable Insurance Trust of June Ellen Kilo dated June 29, 1983, by and through its Trustee, John A. Kilo, prays for judgment against Defendant The Lincoln National Life Insurance Company, on Count I of its Petition for the death benefits payable under in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00), costs expended herein, and for such other and further relief as this Court deems just and proper under the circumstances.

**COUNT II  
DECLARATORY JUDGMENT**

COMES NOW the Irrevocable Insurance Trust of June Ellen Kilo dated June 29, 1983, by and through its Trustee, John A. Kilo, and the undersigned counsel, and for Count II of its cause of action against Defendant The Lincoln National Life Insurance Company, and states to this Court as follows:

12. Plaintiff realleges, adopts and incorporates by reference as is fully set forth herein, the allegations contained in paragraphs 1 through 11 of Count I of this Petition as and for this paragraph 12 of Count II.

13. A controversy exists between the parties concerning the rights of Plaintiff under the Policy to receive payment of the death benefit proceeds payable thereunder.

14. By reason of the foregoing, a Declaratory Judgment is both necessary and proper in order to set forth and determine the rights, obligations and liabilities that exist between the Plaintiff and Defendant under the terms and conditions of the Policy.

WHEREFORE, Plaintiff the Irrevocable Insurance Trust of June Ellen Kilo dated June 29, 1983, by and through its Trustee, John A. Kilo, prays that the Court make and enter its Order and Judgment on Count II of its Petition declaring that the death benefits payable under the terms of the Policy in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) is payable to him thereunder, together with costs, and for such other and further relief as this Court deems just and proper under the circumstances.

**COUNT III  
VEXATIOUS REFUSAL TO PAY**

COMES NOW Plaintiff the Irrevocable Insurance Trust of June Ellen Kilo dated June 29, 1983, by and through its Trustee, John A. Kilo, and the undersigned counsel, and for Count III of its cause of action against Defendant The Lincoln National Life Insurance Company, and states to this Court as follows:

15. Plaintiff realleges, adopts and incorporates by reference as is fully set forth herein, the allegations contained in paragraphs 1 through 11 of Count I of this Petition

and paragraphs 12 through 14 of Count II of this Petition as and for this paragraph 15 of Count III.

16. The refusal of Defendant to pay said death benefit proceeds to Plaintiff was, and is, vexatious and without reasonable cause or excuse and in violation of terms and provisions of said Policy of insurance. Plaintiff is, therefore, entitled to recover statutory damages and Plaintiff's reasonable attorneys' fees as provided in REV.MOSTAT. §§ 375.296 and 375.420.

WHEREFORE, Plaintiff the Irrevocable Insurance Trust of June Ellen Kilo dated June 29, 1983, by and through its Trustee, John A. Kilo, prays for judgment against Defendant The Lincoln National Life Insurance Company, on Count III of its Petition for the death benefits payable under the terms of the Policy in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00), additional statutory damages and reasonable attorney's fees pursuant MO. REV. STAT. §§ 375.296 and 375.420; the costs expended herein; and for such other and further relief as this Court deems just and proper under the circumstances.

KILO, FLYNN, BILLINGSLEY,  
TRAME & BROWN, P.C.

By: /s/ ROBERT E. TRAME  
ROBERT E. TRAME, #21674  
TIMOTHY W. CALLAHAN, #56749  
Attorneys for Plaintiff  
5840 Oakland Avenue  
St. Louis, Missouri 63110  
(314) 647-8910  
(314) 647-3134 (Fax)  
[retrame@kiloflynn.com](mailto:retrame@kiloflynn.com)  
[tcallahan@kiloflynn.com](mailto:tcallahan@kiloflynn.com)

**CERTIFICATION UNDER RULE 55.03(A)**

Pursuant to Rule 55.03(a), the undersigned certifies that he signed an original of this pleading and that an original of this pleading shall be maintained for a period not less than the maximum allowable time to complete the appellate process.

/s/ ROBERT E. TRAME



## IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

Judge or Division: MICHAEL KELLAN MULLEN	Case Number: 1722-CC10838	Special Process Server 1
Plaintiff/Petitioner: IRREVOCABLE INS TRUST OF JUNE ELLEN KILO DTD 6/29/83  vs.	Plaintiff's/Petitioner's Attorney/Address ROBERT E TRAME 5840 OAKLAND AVENUE ST. LOUIS, MO 631101320	Special Process Server 2 Special Process Server 3
Defendant/Respondent: THE LINCOLN NATIONAL LIFE INSURANCE COMPANY	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	
Nature of Suit: CC Breach of Contract		(Date File Stamp)

**Summons in Civil Case****The State of Missouri to:** THE LINCOLN NATIONAL LIFE INSURANCE COMPANY**Alias:**

DIR OF INS JOHN F REHAGEN  
301 WEST HIGH STREET ROOM 530  
JEFFERSON CITY, MO 65101

**COLE COUNTY****CITY OF ST LOUIS**

You are summoned to appear before this court and to file your pleading, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

**July 24, 2017**

Clerk

Date

Further Information:

**Sheriff's or Server's Return****Note to serving officer:** Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.  
 leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with \_\_\_\_\_ a person of the Defendant's/Respondent's family over the age of 15 years.  
 (for service on a corporation) delivering a copy of the summons and a copy of the petition to \_\_\_\_\_

(name) \_\_\_\_\_ (title) \_\_\_\_\_

 other \_\_\_\_\_

Served at \_\_\_\_\_ (address)

in \_\_\_\_\_ (County/City of St. Louis), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

**Must be sworn before a notary public if not served by an authorized officer:**

(Seal)

Subscribed and sworn to before me on \_\_\_\_\_ (date).

My commission expires: \_\_\_\_\_

Date

Notary Public

**Sheriff's Fees**

Summons \$\_\_\_\_\_

Non Est \$\_\_\_\_\_

Sheriff's Deputy Salary \$\_\_\_\_\_

Supplemental Surcharge \$\_\_\_\_\_ 10.00

Mileage \$\_\_\_\_\_ (\_\_\_\_\_ miles @ \$.\_\_\_\_\_ per mile)

**Total** \$\_\_\_\_\_A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

RECEIVED



## IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

AUG 07 2017

COLE COUNTY  
SHERIFF'S OFFICE

Special Process Server 1

Special Process Server 2

Special Process Server 3

ENTERED

Aug 07 2017  
(Date File Stamp)

Judge or Division: <b>MICHAEL KELLAN MULLEN</b>	Case Number: <b>1722-CC10838</b>	Special Process Server 1
Plaintiff/Petitioner: <b>IRREVOCABLE INS TRUST OF JUNE ELLEN KILO DTD 6/29/83</b>	Plaintiff's/Petitioner's Attorney/Address <b>ROBERT E TRAME 5840 OAKLAND AVENUE ST. LOUIS, MO 631101320</b>	
vs.  Defendant/Respondent: <b>THE LINCOLN NATIONAL LIFE INSURANCE COMPANY</b>	Court Address: <b>CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101</b>	Special Process Server 2 Special Process Server 3
Nature of Suit: <b>CC Breach of Contract</b>		ENTERED

## Summons in Civil Case

BAH

The State of Missouri to: **THE LINCOLN NATIONAL LIFE INSURANCE COMPANY**

Alias:

COLE COUNTY

DIR OF INS JOHN F REHAGEN  
301 WEST HIGH STREET ROOM 530  
JEFFERSON CITY, MO 65101

CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

July 24, 2017

*Thomas Moeggingen*

Clerk

Date

Further Information:

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 leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.  
 (for service on a corporation) delivering a copy of the summons and a copy of the petition to

*Kathy Tates* (name) *John* (title). other \_\_\_\_\_Served at *301 W H St* (address)in *St. Louis* (County/City of St. Louis), MO, on *8/1/17* (date) at *1020 A.M.* (time).Printed Name of Sheriff or Server *John S. Schaefer*Signature of Sheriff or Server *By John S. Schaefer 8/1*

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on \_\_\_\_\_ (date).

My commission expires: \_\_\_\_\_ Date \_\_\_\_\_ Notary Public \_\_\_\_\_

3121  
8/30/17

## Sheriff's Fees

Summons \$ \_\_\_\_\_

Non Est \$ \_\_\_\_\_

Sheriff's Deputy Salary \$ \_\_\_\_\_

Supplemental Surcharge \$ 10.00

Mileage \$ \_\_\_\_\_ ( \_\_\_\_\_ miles @ \$ . \_\_\_\_\_ per mile)

Total \$ \_\_\_\_\_

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



Department of Insurance, Financial Institutions and  
Professional Registration

TO: Corporate Secretary (or United States Manager or Last Appointed General Agent) of

LINCOLN NATIONAL LIFE INSURANCE COMPANY  
CSC-LAWYERS INCORPORATING SERVICE CO.  
221 BOLIVAR STREET  
JEFFERSON CITY, MO 65101

RE: Court: St. Louis City Circuit Court, Case Number: 1722-CC10838

You will take notice that original process in the suit against you, a copy of which is attached hereto and sent to you by certified mail, was duly served upon you at Jefferson City, Missouri, by serving the same on the Director of the Department of Insurance, Financial Institutions and Professional Registration of the state of Missouri, Dated at Jefferson City, Missouri this 9th day of August, 2017.

Director of Insurance, Financial Institutions  
and Professional Registration

AFFIDAVIT

State of Missouri,

ss.

County of Cole,

The undersigned Director of the Department of Insurance, Financial Institutions and Professional Registration or the Director's designated agent, hereby makes oath and certifies the original of the above notice to the above addressee was mailed at the United States Post Office in Jefferson City, Missouri on August 11, 2017, by first class certified mail prepaid as provided by section 375.906.5, RSMo. and Supreme Court Rule 54.15

Director, Department of Insurance,  
Financial Institutions and Professional Registration

By:

Subscribed and sworn to before me this 11<sup>th</sup> day of August, 2017.

  
Notary Public

My commission expires: 8/26/2017

JODI L. LEHMAN Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: August 26, 2017 Commission Number: 13497894
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